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AT 1700
Docket 74311aD-W
Customer N . 01333

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

#19
05-16-02
AS

In re Application of

Group Art Unit: 1713

Dennis E. Smith, et al

Examiner: Judy M. Reddick

**SYNTHESIS OF MATTE BEADS
CONTAINING CARBOXYLIC
ACID AND THEIR USE IN
PHOTOGRAPHIC ELEMENTS**

I hereby certify that this correspondence is being deposited today with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, Before the Board of Patent Appeals and Interferences, Washington, D.C. 20231.

Frieda DasFaies
Frieda DasFaies

Serial No. US 09/054,602

April 24, 2002
Date

Filed 03 April 1998

Commissioner for Patents
Box AF
Washington, D.C. 20231

COPY OF PAPERS
ORIGINALLY FILED

Sir:

APPEAL BRIEF TRANSMITTAL

Enclosed herewith in triplicate is Appellants' Appeal Brief for the above-identified application.

The Commissioner is hereby authorized to charge the Appeal Brief filing fee to Eastman Kodak Company Deposit Account 05-0225. A duplicate copy of this letter is enclosed.

Respectfully submitted,

Doreen M. Wells/f-d
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Enclosures

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Attorney for Appellants
Registration No. 34,278

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Docket 74311aD-W
Customer No. 01333

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

Dennis E. Smith, et al

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Frieda DasFeias

Frieda DasFeias

April 24, 2002

Date

COPY OF PAPERS
ORIGINALLY FILED

Sir:

APPEAL BRIEF PURSUANT TO 37 C.F.R. 1.192

Further to the Notice of Appeal filed March 1, 2002, herewith are three
copies of Appellants' Brief on Appeal. Please charge the statutory fee of \$320.00
fee for the filing of this Brief to Eastman Kodak Company Deposit Account No.
05-0225 (A duplicate of this page is enclosed).

This is an appeal from the decision of the Examiner finally rejecting
claims 1-5, 11-23, and 25 of the above-identified application.

(1) REAL PARTY IN INTEREST

The real party in interest in the present application is Eastman Kodak
Company, to whom the present application was assigned on September 24, 1996,
at Reel 8254, Frame 363-365.

(2) RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences.

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(3) STATUS OF THE CLAIMS

Claims 1-5, 11-23, and 25 are pending in the present application, and are all on appeal. A copy of the pending claims appears in the Appendix.

(4) STATUS OF AMENDMENTS AFTER FINAL

On January 8, 2002, Appellants filed an Amendment under 37 CFR §1.116. The Amendment proposed amending claim 1 to incorporate the recitation of claim 5. The Amendment also proposed amendments to claims 1, 3, 12, 18, and 21 to address objections raised in the November 1, 2002 Office Action.

In the Advisory Action of February 19, 2002, entry of the January 8, 2002 Amendment was denied. (Paper No. 17)

(5) SUMMARY OF THE INVENTION

Appellants' claimed invention relates to a polymerization process for making polymeric particles. The process utilizes both water-soluble ethylenically unsaturated monomer(s) containing a carboxylic acid group (i.e., type A monomers) and water-insoluble ethylenically unsaturated monomer(s) (i.e., type B monomers). The monomers are present in a dispersed phase suspended in an aqueous phase. Due to their water-solubility, type A monomers tend to partition into the aqueous phase, especially when higher concentrations are utilized. To avoid this problem, Appellants use within the aqueous phase a water-insoluble particulate stabilizer with a particle size of less than 100 nm and an effective amount of a water-insoluble salt. This provides for the formation of stable monomer droplets in the aqueous phase. Moreover, the monomer droplets contain at least 20% of the carboxylic acid containing monomers. See, e.g., page 6, line 7-page 7, line 25, the Examples at pages 13-24 and claim 1.

(6) ISSUES

The issues outstanding in this application are:

(1) the Rejection under 35 U.S.C. § 103 in view of McNeil (U.S. Patent 5,089,295), i.e., whether claims 1-5 and 11-23 are obvious in view of McNeil;

(2) the Rejection under 35 U.S.C. § 102(b)/103 in view of Utsumi et al. (U.S. Patent 5,002,847), i.e., whether claims 1-5, 11-23 and 25 are anticipated or obvious in view of Utsumi et al.; and

(3) the Rejection under 35 U.S.C. § 102(b)/103 in view of Kamiyama et al. (U.S. Patent 6,104,394), i.e., whether claims 1-5, 11-23 and 25 are anticipated or obvious in view of Kamiyama et al.

(7) GROUPING OF THE CLAIMS

Solely for the purpose of this appeal, claims 2-4, 11-23 and 25 stand or fall with the rejection of claim 1. Claim 5 does not stand or fall with the rejection of claim 1 and is argued separately below.

(8) APPELLANTS' ARGUMENTS

A. Rejection under 35 U.S.C. § 103 in view of McNeil (U.S. Patent 5,089,295)

All of the pending claims, except for claim 25, are rejected under 35 U.S.C. § 103 in view of McNeil (US '295).

The rejection focuses on two portions of the disclosure of US '295. At col. 11, lines 46-67, US '295 describes monomers or comonomers that can be used in the process of the described invention. At cols. 21-23, US '295 describes four examples. In examples I and II, the monomers used in the suspension polymerization process are styrene and 1,3-butadiene. Conversely, in Examples III and IV, the monomers used are styrene and n-butyl methacrylate. Specifically, it is argued in the rejection that it would be obvious to modify Examples III and IV of US '295 to use a monomer having a carboxylic acid group, such as acrylic acid, in place of n-butyl methacrylate or butadiene on grounds that these monomers are allegedly taught as equivalents by US '295.

Nowhere within the disclosure of US '295 is there a statement which indicates that in the processes described therein acrylic acid, or any other carboxylic acid monomer, would be equivalent to an acrylic acid ester or (meth)acrylic acid ester such as n-butyl methacrylate. The disclosure relied on by the rejection at col. 11 merely lists monomers that allegedly can be used in the process described in US '295. There is no indication that each of the monomers described therein will function in an equivalent manner in the disclosed process.

The list of monomers at column 11 is a broad genus of monomers which includes large classes of monomers known as vinyl monomers, monocarboxylic acids and their derivatives, dicarboxylic acids, vinyl esters, vinyl ketones, vinyl naphthalene, unsaturated monolefins, vinylidene halides, and N-vinyl compounds. The mere fact that US '295 lists these classes of monomers as being suitable for use in his disclosed process does not in any way imply that the each of the classes, let alone each of the members thereof, are equivalents when used in the disclosed process. Similarly, while acrylic acid and butyl methacrylate are both listed as examples of monomers within the class "monocarboxylic acids and their derivatives," nothing within the disclosure of US '295 indicates that these two monomers will function equivalently when used in the disclosed process.

If one looks beyond the mere listing of monomers in US '295 and examines the chemical nature of these compounds the inaccuracy of the alleged equivalence becomes readily recognizable to one of ordinary skill in the art. Monomers that are not soluble in water, such as methyl methacrylate and ethyl methacrylate, are well suited for suspension polymerization because the monomers will be suspended within the discrete droplets in the aqueous dispersion medium. However, other monomers are soluble in water, such as acrylic acid and methacrylic acid, due to the presence of, for example, carboxylic acid groups. One of ordinary skill in the art knows that these monomers are soluble in water. See the paragraph bridging pages 3 and 4 of appellants' specification.

When a suspension polymerization is attempted using monomers that are partially or fully water soluble, the monomers will partition into the aqueous phase, which, of course,

will adversely affect polymerization. See page 4, lines 7-21 of appellants' specification. While it is possible to use low amounts of carboxylic acid-containing monomers in suspension polymerization, the partitioning into the dispersion medium becomes more problematic as the concentration of the carboxylic acid-containing monomer increases.

Turning again to col. 11 of US '295, one of ordinary skill in the art would recognize that carboxylic acid-containing monomers such as acrylic acid are at least partially soluble in aqueous dispersion mediums whereas acrylate monomers are not soluble in aqueous dispersion mediums. Thus, one of ordinary skill would clearly recognize that merely because both acrylic acid and butyl methacrylate are listed as monomers for the described process this does not indicate that these monomers are equivalents when used in the disclosed process.

Turning to Examples III and IV of US '295, it is stated in rejection that these examples use a monomer mixture which can contain greater than 20 weight percent of n-butyl methacrylate. Specifically, Example III contains 42.2 weight % n-butyl acrylate, relative to the combination of n-butyl acrylate and styrene, whereas Example IV contains 41.9 weight % n-butyl methacrylate, relative to the combination of n-butyl methacrylate and styrene. However, US '295 provides no disclosure or suggestion that would motivate one of ordinary skill in the art to replace this high percentage of n-butyl methacrylate with a similar high percentage of carboxylic acid-containing monomer such as acrylic acid. Nothing within the disclosure of US '295 provides any suggestion that water soluble carboxylic acid monomers can be used in a suspension polymerization process in an amount equivalent to water insoluble monomers. Nor is there any suggestion in US '295 of using carboxylic acid monomers at concentrations of 20% or higher in a suspension polymerization process.

In the recent Advisory Action of February 19, 2002 (Paper 17), the Examiner argues that McNeil teaches the monomers can be used in amounts from 1 to 99 wt%. Here, the Examiner is referring to the general exemplary range disclosed at column 11, lines 48-49. The description of this general range does not, however, refute the fact that water-soluble monomers and water-insoluble monomers do not act as equivalents in processes involving dispersed monomer droplets within an aqueous phase. Recognizing the water solubility

feature of carboxylic acid containing monomers, one of ordinary skill in the art would not be motivated to use high amounts of water-soluble monomers. The disclosure of a broad general range will not lead one of ordinary skill in the art to ignore the issue of water-solubility.

McNeil describes no procedures for dealing with the problem of monomer partitioning when using high amounts of water-soluble monomers. In fact, none of the Examples of McNeil contain any amount of water-soluble monomers.

Despite the arguments presented in the rejection, the McNeil disclosure does not provide sufficient guidance nor is there sufficient motivation to lead one to an embodiment of appellants' invention. See, e.g., *In re Kotzab*, 55 USPQ2d 1313, 1316 (Fed. Cir 2000):

Even when obviousness is based on a single prior art reference, there must be a showing of suggestion of motivation to modify the teachings of reference. See *B.F. Goodrich Co. v. Aircraft Breaking Sys. v. Corp.*, 72 F. 3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed Cir. 1996).

From all the possible monomer combinations, McNeil does not guide one to select a combination of water-soluble and water-insoluble monomers. Further, McNeil does not suggest such a combination in which a high concentration of water-soluble monomers is used. Moreover, McNeil does not suggest using the combination of a water-insoluble particulate stabilizer and an effective amount of water-soluble salt to alleviate the problems associated with using a high content of water-soluble monomer.

Other aspects presented in the examples of US '295 also fail to suggest features of appellants' claimed process. For example, all of the examples use Mapico Black magnetite. Presumably, the rejection relies upon this component of the suspension polymerization process as a water-insoluble particulate stabilizer. However, nothing within the disclosure of US '295 suggests that this material has a size of less than 100 nm. Nor is there any suggestion in the disclosure of US '295 of using a water-insoluble stabilizer having such a size. Compare appellants' claim 1.

Further, it is noted that in Examples III and IV of US '295 the dispersion medium does not contain a water soluble salt. In the recent Office Action it is argued that use of such a salt in accordance with applicants' process would be obvious. Applicant's respectfully disagree.

In view of the above remarks, it is respectfully submitted that US '295 fails to render obvious appellants' claimed invention. Reversal of the rejection under 35 U.S.C. § 103 is respectfully requested.

Claim 5

As noted above, the dispersion mediums in Examples III and IV of US '295 do not contain a water soluble salt. On the other hand, in Examples I and II, the aqueous dispersion medium of deionized water contains a small amount of sodium nitrite, *i.e.*, 0.1 weight % (0.246 g sodium nitrate to 246 g deionized water). Furthermore, US '295 describes concentrations of sodium nitrite of from about 500 to about 1,500 ppm. See col. 9, lines 62-63.

It is respectfully submitted that there is clearly no suggestion in US '295 for using a water-soluble salt in an amount of 10-50 weight % relative to the dispersion medium. Compare appellants' claim 5. See also appellants' comparative Example 6 which contains 115.8 g sodium chloride to 2,317 g distilled water, *i.e.*, a concentration of 5 weight %. In this example, no useful particles were formed because the monomer droplets agglomerated. On the other hand, compare Example 7 which contains 231.7 g sodium chloride per 2,317 g distilled water, *i.e.*, a concentration of 10 weight %. In this example, suitable particles were obtained within a particle size range of 2-10 microns.

In the Advisory Action of February 19, 2002, it is argued that McNeil's range of 500-1500 ppm clearly overlaps appellants' 10-50 wt% range. Appellants' disagree. The range of 500-1500ppm corresponds to 0.05-.15 wt%.

In view of the above remarks, it is respectfully submitted that US '295 fails to render obvious appellants' claimed invention as recited in claim 5. Reversal of the rejection under 35 U.S.C. § 103 is respectfully requested.

B. Rejection under 35 U.S.C. § 102(b)/103 in View of Utsumi et al. (U.S. Patent 5,002,847)

All of the pending claims are rejected as being obvious in view of U.S. '847.

US '847 discloses a process in which a raw materials-mixture is subjected to suspension polymerization. The raw materials-mixture comprises addition polymerizable monomers with coloring agents and water. The mixture can also contain as a suspension stabilizer a mixture of inorganic suspension stabilizer and an organic suspension stabilizer in an amount of from 0.1-20 parts by weight per 100 parts by weight of the inorganic suspension stabilizer.

The monomers used in the suspension polymerization process are polymerizable unsaturated monomers that have one ethylenically unsaturated bond in molecule. At col. 3, line 54 through col. 4, line 24, US '847 describes a broad genus of addition polymerizable monomers. Further, it is disclosed that these monomers can be used alone or in combination. Included within the list of addition polymerizable monomers are several general classes such as styrene and its derivatives, ethylenically unsaturated monoolefins, vinyl halides, vinyl esters, methacrylic acid and α -methylene aliphatic monocarboxylic acid esters thereof, acrylic acid and acrylic acid esters, vinyl ethers, vinyl ketones, etc.

As can be seen, acrylic acid and its derivative, methacrylic acid, are included within the list of additional polymerizable monomers. However, there is no disclosure in US '847 of a combination of a water-soluble ethylenically unsaturated monomer containing a carboxylic acid group (such as acrylic acid and methacrylic acid) and a water-insoluble ethylenically unsaturated monomer. The possible combinations within the broad genus of addition

polymerizable monomers described in US '847 are quite numerous. There is nothing within the disclosure that leads one of ordinary skill in the art to select from within this broad genus a combination of a carboxylic acid-containing monomer which is water soluble and a water-insoluble ethylenically unsaturated monomer. Moreover, nothing suggests such a combination wherein the amount of carboxylic acid-containing monomers is at least 20% in the droplets of the polymerization suspension.

It is noted that US '847 does make reference to additional polymerizable monomers that have a carboxy group. Specifically, it is disclosed that when using such an additional polymerizable monomer, it is preferred to perform polymerization using lithium phosphate as the suspension stabilizer. Here again, however, there is no specific disclosure of using a water soluble monomer containing a carboxylic acid group in combination with a water-insoluble ethylenically unsaturated monomer.

Regarding lithium phosphates, US '874 describes this material as a preferred suspension stabilizer. See col. 5, line 52-58. It is disclosed that when using lithium phosphates, the resultant polymer particles will likely have an average particle size of from 9.5 microns to 100 microns. In such a case, the suspension stabilizer can be easily removed from the suspension polymerization product. More importantly, US '847 cautions against processes for preparing lithium phosphate that fail to result in a water-insoluble salt being obtained. See col. 5, line 67 through col. 6, line 3.

It is respectfully submitted that US '874 fails to anticipate applicants' claimed invention. As indicated in *Ex Parte Levy*, 17 USPQ2d 1461, 1462 (POBA 1990) in an anticipation rejection it is incumbent upon the Patent and Trademark Office to indicate where each and every feature of the recited invention is described in the prior art reference. In the instant case, US '847 fails to describe any specific embodiment in which a water-soluble carboxylic acid monomer is used in combination with a water-insoluble ethylenically unsaturated monomer. Moreover, there is no disclosure in US '847 which indicates a suspension polymerization process in which the monomer droplets within the aqueous phase comprise at least 20% of carboxylic acid-containing monomer. Further, the rejection and US

'847 are devoid of any suggestion of the use of a water-insoluble particulate stabilizer having a size of less than 100 nanometers.

The disclosure of US '847 also fails to describe or suggest a suspension polymerization embodiment in which the aqueous phase contains a water-soluble inorganic salt. While it is alleged in the Office Action of November 11, 2001 (Paper No. 15) that lithium phosphate meets the feature of water-soluble inorganic salt, it is evident from the disclosure of US '847 that one of ordinary skill in the art would not consider lithium phosphate in the context of the process described therein as a water-soluble salt. See col. 5, line 67 through col. 6, line 3. The disclosure actually dissuades one from using lithium phosphate as a water-soluble salt.

In the recent Advisory Action it is argued that U.S. '847 describes other water-soluble salts, citing column 5, lines 29. There is nothing to suggest that the materials disclosed at column 5, lines 28-32 would be considered water soluble by one of ordinary skill in the art. Moreover, these materials are described as inorganic suspension stabilizers and thus should be water-insoluble. As noted above, U.S. '847 cautions against using the inorganic suspension stabilizer lithium phosphate in a water soluble form.

US '847 also fails to provide sufficient motivation to lead one of ordinary skill in the art to modify the process described therein in such a manner as to arrive at an embodiment according to appellants' claimed invention. Nothing within the disclosure of US '847, including the examples, suggests a carboxylic acid-containing monomer in combination with a water-insoluble monomer in an amount whereby the monomer droplets comprise at least 20% of the carboxylic acid-containing monomer. Further, US '847 is devoid of any suggestion of using an aqueous phase that contains a water-insoluble particulate stabilizer having a particle size of less than 100 nanometers and an effective amount of a water-soluble inorganic salt.

As noted above, the disclosure of US '847 clearly does not lead one of ordinary skill in the art to use lithium phosphate as a water soluble salt in the context of appellants' process.

Moreover, even if one were to ignore the disclosure in US '847 that lithium phosphate is water-insoluble, there is no disclosure of using lithium phosphate in combination with a water-insoluble particulate stabilizer having a particle size of less than 100 nm.

The mere ability in and of itself to modify the disclosure of a reference does not in and of itself establish non-obviousness. See, e.g., *In re Laskowski*, 10 USPQ 1397 (Fed. Cir. 1989). There is nothing presented within the disclosure of US '847 which leads one of ordinary skill in the art to select from all of the possible embodiments of suspension polymerization media described generically therein a suspension polymerization medium in accordance with that described in appellants' claimed invention.

In view of the above remarks, it is respectfully submitted that US '847 fails to anticipate or render obvious appellants' claimed invention. Reversal of the rejection under 35 U.S.C. § 102/103 is respectfully requested.

Claim 5

As discussed above, U.S. '847 does not suggest using a water-soluble salt as in appellants' invention. Further, there is no suggestion in U.S. '847 of using a water-soluble inorganic salt in an amount of 10-50% as noted in appellants' claim 5.

Rejection under 35 U.S.C. § 102(b)/103 in View of Kamiyama et al. (U.S. Patent 6,140,394)

All of the pending claims are rejected as being anticipated or obvious in view of Kamiyama et al. (US '394).

US '394 discloses a suspension polymerization process in which the suspension comprises a dispersed phase containing an addition polymerizable monomeric composition and a continuous phase which contains a suspension stabilizer. The suspension stabilizer is described at col. 6, lines 27-50. However, there is no disclosure or suggestion of particle size with respect to the suspension stabilizer.

The dispersed phase comprises a monomeric composition. Monomers suitable for use in the polymerization process are described generically at col. 10, lines 1-26. These monomers include the classes of styrene and its derivatives; N- vinyl esters of organic acids, methacrylic acid and its derivatives; acrylic acid and its derivatives; N-vinyl compounds; vinyl naphthalenes and other polymerizable monomers.

In Example 1, the continuous phase contains polyvinyl alcohol, sodium sulfate (in amounts of 1% or 3% of water), and water. The monomer phase comprises styrene and butyl acrylate. In example 2, the continuous phase contains calcium phosphate, sodium dodecylsulfonate (3% and 0.03% of water) and water. The monomers contained in the dispersed phase are styrene and butyl acrylate. In Example 3, the continuous phase contains polyvinyl alcohol, sodium sulfate (1% and 3% of water) and water. The monomers contained in the dispersed phase are styrene and butyl acrylate. In Example 4, the continuous phase contains calcium phosphate, sodium dodecylsulfonate (3% and 0.03% of water) and water. The dispersed phase contains the monomers styrene and butyl acrylate.

In the Office Action of November 1, 2001, it is argued that one of ordinary skill in the art would envision the use of acrylic acid in lieu of the butyl acrylate component in the examples, particularly Example 3, in light of the disclosure at col. 10. However, as with the previously discussed prior art, there is no suggestion in the disclosure of US '394 that water-soluble monomers exhibiting a carboxylic acid group such as acrylic acid or methacrylic acid are equivalent to water-insoluble monomers such as butyl acrylate in the context of suspension polymerization. While US '394 describes a broad genus of monomers encompassing both acrylic acid and butyl acrylate, there is nothing indicated in the disclosure of US '394 that these monomers would be equivalent in the context of suspension polymerization. As noted in appellants' specification, water-soluble monomers and water-insoluble monomers are not equivalent in suspension polymerization.

The disclosure of US '394 fails to describe an embodiment in accordance with appellants' claimed invention. As noted above, to establish anticipation it is incumbent upon

the Patent and Trademark Office to indicate where each and every feature of the claimed invention is described in the disclosure of the prior art reference. In the instance case, US '394 fails to provide any description of a suspension polymerization process that contains both a water soluble monomer containing a carboxylic acid group and a water-insoluble monomer. Further, there is no disclosure of a suspension stabilizer having a particle size of less than 100 nm. Nor is there a disclosure or suggestion of a dispersed phase containing at least 20 weight % of a carboxylic acid containing monomer.

US '394 also fails to provide sufficient motivation which would lead one of ordinary skill in the art to an embodiment in accordance with applicants' claimed invention. While it is alleged in the rejection that acrylic acid and butyl acrylate are equivalents in light of the disclosure of US '394, no such disclosure of equivalence is present in the prior art reference. Further, in the context of suspension polymerization, one of ordinary skill in the art is aware that water-soluble monomers, such as acrylic acid, are not equivalent to water-insoluble monomers such as butyl acrylate. Nothing within the rejection suggests otherwise. The mere listing of suitable monomers does not indicate that all monomers function equivalently within the polymerization process of US '394. In particular, the disclosure of US '394 does not suggest that in a suspension polymerization process one could simply replace a dispersed phase containing 20% of a water-insoluble monomer with a dispersed phase containing 20 weight % of a water-soluble monomer. The allegation of equivalence between water-soluble and water-insoluble monomers in a suspension polymerization process is contrary to the understanding within the art and nothing within the disclosure of US '394 suggests otherwise.

Claim 5

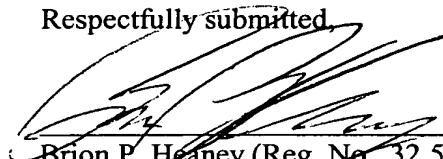
U.S. '394 provides no disclosure or suggestion of using a water-soluble salt in the aqueous phase in an amount of 10-50% wt%. See appellants' claim 5.

In view of the above remarks, it is respectfully submitted that US '394 fails to anticipate or render obvious appellants' claimed invention. Reversal of the rejection under 35 U.S.C. § 102(b)/103 is respectfully requested.

(9) CONCLUSION

In view of the Arguments and authorities presented above, appellants respectfully request the Board of Appeals to reverse the rejections under 35 U.S.C. § 102 and §103.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brion P. Heaney', is written over a horizontal line.

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APPENDIX

1. A process for making polymeric particles comprising:
polymerizing ethylenically unsaturated monomers as a dispersed phase suspended in an aqueous phase,
wherein the ethylenically unsaturated monomers comprise at least one monomer A and at least one monomer B, wherein monomer A is a water soluble ethylenically unsaturated monomer containing a carboxylic acid group and monomer B is a water-insoluble ethylenically unsaturated monomer,
said aqueous phase containing a water-insoluble particulate stabilizer having a size of less than 100 nm and an effective amount of water-soluble inorganic salt to allow formation of stable monomer droplets in the aqueous phase, said monomer droplets comprising at least 20% of said carboxylic acid containing monomer A.
2. The process according to claim 1, wherein said carboxylic acid containing monomer A is selected from the group consisting of acrylic monomers, monoalkyl itaconates, monoalkyl maleates, citraconic acid and styrenecarboxylic acid monomers.
3. The process according to claim 1, wherein the carboxylic acid containing monomer is selected from the group consisting of an acrylic acid and methacrylic acid.
4. The process according to claim 1, wherein the water-insoluble particulate stabilizer comprises colloidal silica.
5. The process according to claim 1, wherein the water-soluble inorganic salts present in the aqueous phase is in a concentration of from 10% to 50%.
11. The process according to claim 1, wherein said water-soluble inorganic salt is aluminum nitrate, aluminum sulfate, ammonium chloride, ammonium nitrate, ammonium sulfate, barium nitrate, borax, calcium chloride, calcium nitrate, calcium sulfate, diammonium sulfate, disodium phosphate, magnesium chloride, magnesium nitrate, magnesium sulfate,

potassium chloride, sodium acetate, sodium carbonate, sodium chloride, sodium metaborate, sodium nitrate, sodium sulfate, trisodium phosphate, zinc chloride, zinc nitrate, or zinc sulfate.

12. The process according to claim 6, wherein said water soluble inorganic salt is sodium chloride.

13. The process according to claim 1, wherein said monomer B is methyl methacrylate, ethyl methacrylate, butyl methacrylate, ethyl acrylate, butyl acrylate, hexyl acrylate, n-octyl acrylate, lauryl methacrylate, 2-ethylhexyl methacrylate, nonyl acrylate, benzyl methacrylate, 2-hydroxyethyl acrylate, 2-hydroxyethyl methacrylate, 2-hydroxypropyl methacrylate, acrylonitrile, methacrylonitrile, acrylamide, methacrylamide, vinyl acetate, vinyl propionate, vinylidene chloride, vinyl chloride, styrene, t-butyl styrene, ethyl vinyl benzene, vinyl toluene, allyl methacrylate, allyl acrylate, butenyl acrylate, undecenyl acrylate, undecenyl methacrylate, vinyl acrylate, vinyl methacrylate, butadiene, isoprene, ethylene glycol diacrylate, ethylene glycol dimethacrylate, triethylene glycol dimethacrylate, 1,4-butanediol dimethacrylate, 1,3-butanediol dimethacrylate, divinyl benzene, trimethylol propane trimethacrylate, pentaerythritol tetramethacrylate or mixtures thereof.

14. The process according to claim 1, wherein said monomer B is styrene, vinyl toluene, methyl methacrylate, ethylene glycol dimethacrylate, ethylene glycol diacrylate, divinylbenzene or ethyl methacrylate.

15. The process according to claim 1, wherein said water-insoluble particulate stabilizer is selected from the group consisting of insoluble metal salts, insoluble metal oxides, clays, starches, and sulfonated cross-linked organic homopolymers, and resinous polymers.

16. The process according to claim 1, wherein said water-insoluble particulate stabilizer is silica or co-poly(styrene-2-hydroxyethyl-methacrylate-methacrylic acid-ethyleneglycol dimethacrylate).

17. The process according to claim 1, wherein said aqueous phase further comprises at least one promoter.

18. The process according to claim 12, wherein said promoter is polydiethanolamine.

19. The process according to claim 1, wherein said monomer A is acrylic acid, methacrylic acid, ethacrylic acid, itaconic acid, maleic acid, fumaric acid, monomethyl itaconate, monoethyl itaconate, monobutyl itaconate, monomethyl maleate, monoethyl maleate, monobutyl maleate, or citraconic acid.

20. The process according to claim 1, wherein said aqueous phase further comprises at least one polymerization inhibitor

21. The process according to claim 15, wherein said polymerization inhibitor is potassium dichromate or cupric sulfate pentahydrate.

22. The process according to claim 1, wherein
said water-soluble inorganic salt is aluminum nitrate, aluminum sulfate, ammonium chloride, ammonium nitrate, ammonium sulfate, barium nitrate, borax, calcium chloride, calcium nitrate, calcium sulfate, diammonium sulfate, disodium phosphate, magnesium chloride, magnesium nitrate, magnesium sulfate, potassium chloride, sodium acetate, sodium carbonate, sodium chloride, sodium metaborate, sodium nitrate, sodium sulfate, trisodium phosphate, zinc chloride, zinc nitrate, or zinc sulfate;

said monomer A is acrylic acid, methacrylic acid, ethacrylic acid, itaconic acid, maleic acid, fumaric acid, monomethyl itaconate, monoethyl itaconate, monobutyl itaconate, monomethyl maleate, monoethyl maleate, [monobutyl] monobutyl maleate, or citraconic acid;

said monomer B is methyl methacrylate, ethyl methacrylate, butyl methacrylate, ethyl acrylate, butyl acrylate, hexyl acrylate, n-octyl acrylate, lauryl methacrylate, 2-ethylhexyl methacrylate,

nonyl acrylate, benzyl methacrylate, 2-hydroxyethyl acrylate, 2-hydroxyethyl methacrylate, 2-hydroxypropyl methacrylate, acrylonitrile, methacrylonitrile, acrylamide, methacrylamide, vinyl acetate, vinyl propionate, vinylidene chloride, vinyl chloride, styrene, t-butyl styrene, ethyl vinyl benzene, vinyl toluene, allyl methacrylate, allyl acrylate, butenyl acrylate, undecenyl acrylate, undecenyl methacrylate, vinyl acrylate, vinyl methacrylate, butadiene, isoprene, ethylene glycol diacrylate, ethylene glycol dimethacrylate, triethylene glycol dimethacrylate, 1,4-butanediol dimethacrylate, 1,3-butanediol dimethacrylate, divinyl benzene, trimethylol propane trimethacrylate, pentaerythritol tetramethacrylate or mixtures thereof; and

said water-insoluble particulate stabilizer is selected from the group consisting of insoluble metal salts, insoluble metal oxides, clays, starches, and sulfonated cross-linked organic homopolymers.

23. The process according to claim 1, wherein
said water-soluble inorganic salt is sodium chloride or potassium chloride;

said monomer A is acrylic acid, methacrylic acid, ethacrylic acid, itaconic acid, maleic acid, fumaric acid, monomethyl itaconate, monoethyl itaconate, monobutyl itaconate, monomethyl maleate, monoethyl maleate, monobutyl maleate, or citraconic acid;

said monomer B is styrene, vinyl toluene, methyl methacrylate, ethylene glycol dimethacrylate, ethylene glycol diacrylate, divinylbenzene or ethyl methacrylate; and

said water-insoluble particulate stabilizer is silica or co-poly(styrene-2-hydroxyethyl-methacrylate-methacrylic acid-ethyleneglycol dimethacrylate).

25. The process according to claim 1, wherein the process according to claim 1,
wherein

said water-soluble inorganic salt is aluminum nitrate, aluminum sulfate, ammonium chloride, ammonium nitrate, ammonium sulfate, barium nitrate, borax, calcium chloride, calcium nitrate, calcium sulfate, diammonium sulfate, disodium phosphate, magnesium chloride, magnesium nitrate, magnesium sulfate, potassium chloride, sodium acetate, sodium carbonate, sodium chloride, sodium metaborate, sodium nitrate, sodium sulfate, trisodium phosphate, zinc chloride, zinc nitrate, or zinc sulfate;

said monomer A is acrylic acid, methacrylic acid, ethacrylic acid, itaconic acid, maleic acid, fumaric acid, monomethyl itaconate, monoethyl itaconate, monobutyl itaconate, monomethyl maleate, monoethyl maleate, monobutyl maleate, or citraconic acid;

said monomer B is methyl methacrylate, ethyl methacrylate, butyl methacrylate, ethyl acrylate, butyl acrylate, hexyl acrylate, n-octyl acrylate, lauryl methacrylate, 2-ethylhexyl methacrylate, nonyl acrylate, benzyl methacrylate, 2-hydroxyethyl acrylate, 2-hydroxyethyl methacrylate, 2-hydroxypropyl methacrylate, acrylonitrile, methacrylonitrile, acrylamide, methacrylamide, vinyl, vinyl acetate, vinyl propionate, vinylidene chloride, vinyl chloride, styrene, t-butyl styrene, ethyl vinyl benzene, vinyl toluene, allyl methacrylate, allyl acrylate, butenyl acrylate, undecenyl acrylate, undecenyl methacrylate, vinyl acrylate, vinyl methacrylate, butadiene, isoprene, ethylene glycol diacrylate, ethylene glycol dimethacrylate, triethylene glycol dimethacrylate, 1,4-butanediol dimethacrylate, 1,3-butanediol dimethacrylate, divinyl benzene, trimethylol propane trimethacrylate, pentaerythritol tetramethacrylate or mixtures thereof; and

said water-insoluble particulate stabilizer is selected from insoluble metal salts, insoluble metal oxides, oxide, clays, starches, sulfonated cross-linked organic homopolymers, and resinous polymers.

forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

(b) On failure to file the brief, accompanied by the requisite fee, within the time allowed, the appeal shall stand dismissed.

(c) The brief shall contain the following items under appropriate headings and in the order indicated below unless the brief is filed by an applicant who is not represented by a registered practitioner:

(1) *Real party in interest.* A statement identifying the real party in interest, if the party named in the caption of the brief is not the real party in interest.

(2) *Related appeals and interferences.* A statement identifying by number and filing date all other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) *Status of claims.* A statement of the status of all the claims, pending or cancelled, and identifying the claims appealed.

(4) *Status of amendments.* A statement of the status of any amendment filed subsequent to final rejection.

(5) *Summary of invention.* A concise explanation of the invention defined in the claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.

(6) *Issues.* A concise statement of the issues presented for review.

(7) *Grouping of claims.* For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

(8) *Argument.* The contentions of appellant with respect to each of the issues presented for review in paragraph (c)(6) of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.

(i) For each rejection under 35 U.S.C. 112, first paragraph, the argument shall specify the errors in the rejection and how the first paragraph of 35 U.S.C. 112 is complied with, including, as appropriate, how the specification and drawings, if any,

(A) Describe the subject matter defined by each of the rejected claims,

(B) Enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims, and

(C) Set forth the best mode contemplated by the inventor of carrying out his or her invention.

(ii) For each rejection under 35 U.S.C. 112, second paragraph, the argument shall specify the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(iii) For each rejection under 35 U.S.C. 102, the argument shall specify the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. 102, including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.

(iv) For each rejection under 35 U.S.C. 103, the argument shall specify the errors in the rejection and, if appropriate, the specific limitations in the rejected claims which are not described in the prior art relied on in the rejection, and shall explain how such limitations render the claimed subject matter unobvious over the prior art. If the rejection is based upon a combination of references, the argument shall explain why the references, taken as a whole, do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may not properly be combined with features disclosed in another reference. A general argument that all the limitations are not described in a single reference does not satisfy the requirements of this paragraph.

(v) For any rejection other than those referred to in paragraphs (c)(8)(i) to (iv) of this section, the argument shall specify the errors in the rejection and the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error.

(9) *Appendix.* An appendix containing a copy of the claims involved in the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

Where the brief is not filed, but within the period allowed for filing the brief an amendment is presented which places the application in condition for allowance, the

amendment may be entered since the application retains its pending status during said period. Amendments should not be included in the appeal brief. Amendments should be filed as separate papers. See MPEP § 1207, § 1215.01, and § 1215.02.

TIME FOR FILING APPEAL BRIEF

37 CFR 1.192(a) provides 2 months from the date of the notice of appeal for the appellant to file an appeal brief. In an *ex parte* reexamination proceeding, the time period can be extended only under the provisions of 37 CFR 1.550(c). See also MPEP § 2274.

The usual period of time in which appellant must file his or her brief is 2 months from the date of appeal. The Office date of receipt of the notice of appeal (and not the date indicated on any Certificate of Mailing under 37 CFR 1.8) is the date from which this 2 month time period is measured. See MPEP § 512. However, 37 CFR 1.192(a) alternatively permits the brief to be filed “within the time allowed for reply to the action from which the appeal was taken, if such time is later.” These time periods may be extended under 37 CFR 1.136(a), and if 37 CFR 1.136(a) is not available, under 37 CFR 1.136(b) for extraordinary circumstances.

In the event that the appellant finds that he or she is unable to file a brief within the time period allotted by the rules, he or she may file a petition, with fee, to the Technology Center (TC), requesting additional time under 37 CFR 1.136(a). Additional time in excess of 5 months will not be granted unless extraordinary circumstances are involved under 37 CFR 1.136(b). The time extended is added to the calendar day of the original period, as opposed to being added to the day it would have been due when said last day is a Saturday, Sunday, or Federal holiday.

If after an appeal has been filed, but prior to the date for submitting a brief, an interference is declared, appellant’s brief need not be filed while the interference is pending, unless the administrative patent judge has consented to prosecution of the application concurrently with the interference. See MPEP § 2315. Absent such concurrent prosecution, the examiner may, after the interference has terminated and the files have been returned to him or her, (A) set a 2-month period for filing the brief, or (B) withdraw the final rejection of the appealed claims in order to enter an additional rejection on a ground arising out of the interference. See, for example, MPEP § 2363.03. Also, if the appellant was the losing party in the interference, claims which were designated as corresponding to the lost count or counts will stand finally disposed of under 37 CFR 1.663.

When an application is revived after abandonment for failure on the part of the appellant to take appropriate action after final rejection, and the petition to revive was accompanied by a notice of appeal, appellant has 2 months, from the mailing date of the Commissioner’s affirmative decision on the petition, in which to file the appeal brief. The time period for filing the appeal brief may be extended under 37 CFR 1.136.

With the exception of a declaration of an interference or suggestion of claims for an interference and timely copying of claims for an interference, the appeal ordinarily will be dismissed if the brief is not filed within the period provided by 37 CFR 1.192(a) or within such additional time as may be properly extended.

A brief must be filed to preserve appellant’s right to the appealed claims, notwithstanding circumstances such as:

- (A) the possibility or imminence of an interference involving the subject application, but not resulting in withdrawal of the final rejection prior to the brief’s due date;
- (B) the filing of a petition to invoke the supervisory authority of the Commissioner under 37 CFR 1.181;